

EXHIBIT 1

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1 JOHN OHLSON, ESQ.
2 NV Bar No. 1672
3 275 Hill Street, Suite 230
4 Reno, Nevada 89501
5 Telephone: (775) 323-2700
6 Attorney for Plaintiff

7 UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF NEVADA

9 *****

10 TAN NGUYEN, an individual
11 Plaintiff,

Case No.: 3:14-cv-00039

12 v.

SECOND AMENDED
COMPLAINT

13 HUMBOLDT COUNTY, a political
14 subdivision of the State of Nevada; ED
15 KILGORE, Sheriff of Humboldt County; LEE
16 DOVE, a deputy sheriff employed by
17 Humboldt County; KEVIN PASQUALE,
18 Chief Deputy District Attorney for Humboldt
19 County; DOES 1-10 and ROE
20 CORPORATIONS I-X, inclusive, jointly and
21 severally,

22 Defendants.

23 _____/
24 Comes now the Plaintiff, Tan Nguyen, by and through his attorney of record,
25 John Ohlson, Esq., and complains and alleges against the defendants as follows:

- 26 1. Plaintiff is a resident of a State other than the State of Nevada.
- 27 2. Defendant Humboldt County is a political subdivision of the State of
28 Nevada.
3. Defendant Ed Kilgore (“Kilgore”) is employed by Defendant Humboldt
County as its sheriff.
4. Deputy Sherriff Lee Dove (“Dove”) is a deputy sheriff employed by
defendant Humboldt County as a law enforcement officer.

1 5. Defendant Kevin Pasquale ("Pasquale") is employed by defendant
2 Humboldt County as its Chief Deputy District Attorney in the Humboldt County
3 District Attorney's Office.

4 6. At all relevant times, Dove was acting within his capacity as a law
5 enforcement officer employed by Humboldt County and under the supervision of
6 Kilgore, and acted within the scope and course of that employment.

7 7. The true names and capacities, whether individual, corporate, associate or
8 otherwise of Defendants Does 1-10 and Roe Corporations I-X, inclusive, are unknown
9 to Plaintiff, who therefore sues those Defendants by such fictitious names. Plaintiff is
10 informed and believes, and alleges, that each of the Defendants designated by such a
11 fictitious name is in some manner responsible for the events and happenings referred to
12 and proximately caused foreseeable damage to Plaintiff. Plaintiff will seek leave of the
13 Court to amend this Complaint to show their true names and capacities when the true
14 identities of the fictitious Defendants have been ascertained.

Factual Allegations

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16 8. On or about September 23, 2013, Plaintiff was travelling in his
17 automobile on Interstate 80 near and through Winnemucca, Humboldt County, Nevada
18 when he was stopped by Dove;

19 9. The pretext for the stop, as explained by Dove, was that Plaintiff was
20 travelling at 78 miles per hour in a 75 mile an hour speed zone.

21 10. It is contrary to custom and practice for law enforcement to stop a vehicle
22 for exceeding the speed limit by three miles per hour.

23 11. Dove stopped Plaintiff in a "profile stop," suspecting that Plaintiff was
24 transporting illegal drugs, which he was not.

25 12. During the stop, Dove requested that Plaintiff give him permission to
26 search his vehicle.

27 13. Plaintiff refused Dove's request to search the car.

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1 14. Dove then forcibly searched the vehicle and opened a brief case
2 belonging to the plaintiff that was located in the vehicle.

3 15. Contained in the plaintiff's brief case was the sum of \$50,000 in U.S.
4 Currency and two cashier's checks payable to Plaintiff.

5 16. Dove confiscated the currency and executed a printed document, which
6 Dove signed illegibly.

7 17. The document executed and signed by Dove purports to be an official
8 Humboldt County Sherriff's Office printed form entitled "Property For Safekeeping
9 Receipt," which Dove interlineated to indicate that the property was abandoned or
10 seized and was not returnable.

11 18. Dove described the "property" as "5 separate Stacks of US Currency
12 amount to be determined w/U.S. Bank Count." A copy of said document is attached
13 hereto as Exhibit "1."

14 19. Plaintiff was neither arrested nor cited for any violation of the law in
15 relation to this encounter with Dove.

16 20. Rather, Dove gave the plaintiff only a warning, a copy of which is
17 attached as Exhibit "2."

18 21. On information and belief, Dove failed to give Plaintiff a traffic citation,
19 consistent with the pretext for stopping Plaintiff, to avoid the risk that the judicial
20 system would become involved in reference to the traffic stop.

21 22. At no time relevant hereto did Dove have any legal basis for taking
22 Plaintiff's property.

23 23. Dove's seizure of the plaintiff's money was without cause and unlawful.
24 Upon seizure of Plaintiff's money, Dove threatened to have Plaintiff's car seized and
25 towed, leaving Plaintiff afoot, unless Plaintiff "got in his car and drove off and forgot
26 this ever happened."

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1 24. Plaintiff is the lawful and rightful owner of the above-described U.S.
2 Currency and was rightfully maintaining his property in his possession when Dove
3 seized the money without any cause.

4 25. Defendants Humboldt County, Kilgore, and/or Pasquale had knowledge,
5 prior to the events described herein above, that Dove, while acting as its employee, in
6 the scope and course of his employment had, on other and diverse occasions, similarly
7 stopped persons passing through Humboldt County and seized their property and cash.

8 26. The conduct and actions of the defendants, and each of them, were not
9 based upon considerations of social, economic, or political policy, and were otherwise
10 in bad faith, transcending the scope of authority granted to them, and each of them.

11 27. Even though possessed with this knowledge of Dove's unlawful activities
12 on its behalf, Defendants Humboldt County, Kilgore, and Pasquale have done nothing
13 to prevent Dove's behavior, and/or have otherwise ratified or participated in Dove's
14 conduct.

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16 **FIRST CLAIM FOR RELIEF**
Conversion

17 28. Plaintiff realleges the preceding paragraphs of this complaint and
18 incorporates them by reference as thought fully stated here.

19 29. Plaintiff is the owner of the \$50,000 in U.S. Currency that was contained
20 in the brief case located in the Plaintiff's car at the time he was stopped by Dove.

21 30. The above-described U.S. Currency belonging to the Plaintiff was
22 wrongfully taken from the Plaintiff by Dove.

23 31. Since taking possession of the Plaintiff's money, Defendants Humboldt
24 County, Kilgore, Pasquale, and/or Dove have wrongfully detained the Plaintiff's
25 money.
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1 32. At all times, the Plaintiff has been entitled to the return and possession of
2 the U.S. Currency that was wrongfully taken by Dove and wrongfully detained by
3 Humboldt County, Kilgore, Pasquale, and/or Dove.

4 33. Despite repeated requests by the Plaintiff for the return of his money,
5 Defendants have refused, and continue to refuse, to return to the Plaintiff's money to
6 him.

7 34. On information and belief, Defendants Humboldt County, Kilgore,
8 Pasquale, and/or Dove have benefitted from and used the money that was wrongfully
9 taken from the Plaintiff and is being wrongfully detained by them, and have converted
10 the money for their own use.

11 35. The conduct and actions of the defendants, and each of them, were not
12 based upon considerations of social, economic, or political policy, and were otherwise
13 in bad faith, transcending the scope of authority granted to them, and each of them.

14 36. As a direct and proximate result of the conversion by Defendants
15 Humboldt County, Kilgore, Pasquale and/or Dove of the Plaintiff's \$50,000 in U.S.
16 Currency, the Plaintiff has suffered damages in an amount in excess of Ten Thousand
17 Dollars (\$10,000.00).

18 37. As a further direct and proximate result of the conversion by Defendants
19 Humboldt County, Kigore, Pasquale, and/or Dove of the Plaintiff's \$50,000 in U.S.
20 currency, the Plaintiff has suffered emotional distress and injury in an amount to be
21 proven at trial.

22 38. As a further direct and proximate result of the Defendants' conduct, the
23 Plaintiff was required to hire an attorney to represent him in this matter and seeks an
24 award of his attorney's fees and costs.

25 39. The conversion by Defendants Humboldt County, Kilgore, Pasquale,
26 and/or Dove of the Plaintiff's \$50,000 in U.S. Currency was intentional, malicious, and
27 oppressive, for which Plaintiff is entitled to recover exemplary and punitive damages.
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SECOND CLAIM FOR RELIEF
Civil Rights Violation – Unconstitutional Search and Seizure

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3 40. Plaintiff realleges the preceding paragraphs of this complaint and
4 incorporates them by reference as thought fully stated here.

5 41. The traffic stop of the Plaintiff effected by Dove based upon the Plaintiff
6 travelling at 78 mph in a 75 mph zone was pretextual and in violation of the Plaintiff's
7 Fourth Amendment Right against unreasonable search and seizure in that it is contrary
8 to custom and practice for law enforcement to stop a vehicle for exceeding the speed
9 limit by three miles per hour, and Dove did not otherwise have probable cause to stop
10 the Plaintiff.

11 42. Dove's subsequent detention of the Plaintiff and his unauthorized search
12 of the Plaintiff's vehicle without the Plaintiff's consent and without probable cause was
13 contrary to the Plaintiff's right against unreasonable search and seizure under the
14 Fourth Amendment to the United States Constitution.

15 43. Dove's seizure of the Plaintiff's property – the \$50,000 in U.S. Currency
16 located in the Plaintiff's brief case inside his vehicle – as part of his pretextual stop and
17 unauthorized search of the Plaintiff's vehicle violated the Plaintiff's right against
18 unreasonable search and seizure under the Fourth Amendment to the United States
19 Constitution.

20 44. Defendants Humboldt County, Kilgore, and/or Pasquale had knowledge,
21 prior to the events described herein above, that Dove, while acting as its employee, in
22 the scope and course of his employment had, on other and diverse occasions, similarly
23 stopped persons passing through Humboldt County and seized their property and cash.

24 45. Since Dove took possession of the Plaintiff's money, Defendants
25 Humboldt County, Kilgore, Pasquale and/or Dove have wrongfully detained the
26 Plaintiff's money.

27 46. At all times, the Plaintiff has been entitled to the return and possession of
28 the U.S. Currency that was wrongfully taken by Dove and wrongfully detained by

1 Humboldt County, Kilgore, Pasquale, and/or Dove in violation of the Plaintiff's Fourth
2 Amendment Right against unreasonable search and seizure.

3 47. Despite repeated requests by the Plaintiff for the return of his money,
4 Defendants have refused, and continue to refuse, to return to the Plaintiff's money to
5 him.

6 48. The conduct and actions of the defendants, and each of them, were not
7 based upon considerations of social, economic, or political policy, and were otherwise
8 in bad faith, transcending the scope of authority granted to them, and each of them.

9 49. As a direct and proximate result of the Defendants' violation of the
10 Plaintiff's Fourth Amendment Right against unreasonable search and seizure, the
11 Plaintiff has suffered damages in an amount in excess of Ten Thousand Dollars
12 (\$10,000.00).

13 50. As a further direct and proximate result of the Defendants' violation of
14 Plaintiff's Fourth Amendment Right against unreasonable search and seizure, the
15 Plaintiff has suffered emotional distress and injury in an amount to be proven at trial.

16 51. As a further direct and proximate result of the Defendants' conduct, the
17 Plaintiff was required to hire an attorney to represent him in this matter and seeks an
18 award of his attorney's fees and costs.

19 52. Plaintiff seeks a judicial determination that his \$50,000 in U.S. Currency
20 was taken from him by Dove and withheld from him by Defendants Humboldt County,
21 Kilgore, Pasquale, and Dove in violation of his Fourth Amendment right against
22 unreasonable search and seizure.

23 WHEREFORE, the Plaintiff prays as follows:

24 1. Judgment in his favor and against the Defendants on all claims alleged in
25 this complaint;

26 2. An award of general damages in his favor and against the Defendants,
27 according to proof, but in excess of \$10,000.

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3. An award of special damages in his favor in the sum of \$50,000.

4. An award of damages in a sum equal to three times the aggregate amount of all other damages awarded.

5. An award of exemplary and punitive damages in his favor and against the Defendants, according to proof, on all applicable claims in this complaint, but in excess of \$10,000;

6. An award of interest, costs, and attorney's fees to him and against the Defendants.

7. Such other and further relief as this Court deems just and proper.

DATED this 12th day of February, 2014.

By: */s/ John Ohlson*
JOHN OHLSON, ESQ.
Bar Number 1672
275 Hill Street, Suite 230
Reno, Nevada 89501
Telephone: (775) 323-2700
Attorney for Plaintiff

SCHEDULE OF EXHIBITS

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EXHIBIT 1: Property for Seizure/Abandonment Receipt
EXHIBIT 2: Warning Citation

EXHIBIT 1

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HUMBOLDT COUNTY SHERIFF'S OFFICE
25 WEST FIFTH STREET
WINNEMUCCA, NV 89445
775-623-6419

SEIZURE / ABANDONMENT
PROPERTY FOR SAFEKEEPING RECEIPT

CASE NO: 0913-054
NAME OF PROPERTY OWNER: HCSO VIA TAN KHAC NGUYEN
ADDRESS OR NOTIFICATION ADDRESS: 215 1/2 GRANT ST. NEWPORT BEACH,
CITY: NEWPORT BEACH STATE: CA ZIP: 92663 PHONE: NA.
DATE & TIME PROPERTY RECEIVED: 09/23/13 @ 1620

PROPERTY DESCRIPTION	BRAND, MODEL, SERIAL#, ETC.
5- SEPARATE STACKS OF U.S. CURRENCY	
AMOUNT TO BE DETERMINED W/	
U.S. BANK COUNT.	
CASH IS ABANDONED CURRENCY	
NO FURTHER ACTION CAN BE TAKEN	
TO GET CASH BACK	

THE ABOVE DESCRIBED PROPERTY HAS BEEN STORED FOR SAFEKEEPING BY THE HUMBOLDT COUNTY SHERIFF'S OFFICE. THE PROPERTY MAY BE CLAIMED BY CONTACTING THE EVIDENCE CUSTODIAN AT THE ABOVE ADDRESS OR PHONE NUMBER TO SCHEDULE AN APPOINTMENT.

IF THE PROPERTY IS NOT CLAIMED WITHIN 180 DAYS, IT WILL BE DISPOSED OF PURSUANT TO NEVADA REVISED STATUTE AND DEPARTMENT POLICY. IF YOU ARE INCARCERATED WITHIN THE 180 DAYS, THEN YOU MUST DESIGNATE SOMEONE TO PICKUP THE PROPERTY FOR YOU AFTER NOTIFYING THE EVIDENCE CUSTODIAN.

I HAVE READ THE ABOVE NOTICE AND UNDERSTAND HOW I MAY CLAIM THE ABOVE LISTED PROPERTY.

SIGNATURE OF PROPERTY OWNER: [Signature] DATE: _____

SIGNATURE OF DEPUTY: [Signature] DATE: 9/23/13

ORIGINAL-PROPERTY OWNER; YELLOW COPY-CASE FILE; PINK COPY-EVIDENCE CUSTODIAN

EXHIBIT 2

EXHIBIT 2

Last:

Court Case # _____

Juvenile Traffic Non-Traffic Parking Meter #

Accident Warning

School Zone Construction Zone Urban

Rural Beat/Area: _____ Mile Marker: _____

Travel Direction: North South East West Road Conditions: _____ Traffic: _____

Weather Conditions: _____ Issue Time: _____

Issue Date: 7/10/13 Day Code: _____ Violation Time: 15:55

Violation Date: _____

Defendant Type: _____

Driver: Passenger Pedestrian Other

Had Been Drinking: Yes No Unk

Test Type: PBT Blood Breath UA

Drugs Suspected: _____ Results: _____

Explain Other: _____

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF NEVADA, CITY/COUNTY _____

Name (Last, First, Middle): NGUYEN TAN KHAC

SSN: _____

Address: Physical Mailing City: _____ State: _____ Zip: 92663 Country: _____

215 1/2 GRANT ST. AIRPORT CA

DOB: 4-19-77 Race: A Sex: M Ht: 5'7" Wt: 190 Hair: BLK Eyes: BRN

OLN / ID: F2583672 CA C Expiration: 4/2015

Restrictions: _____ Endorsements: _____

Phone: _____ Work: _____ Employer: _____

DID OPERATE THE FOLLOWING VEHICLE / MOTOR VEHICLE AT THE ABOVE LISTED LOCATION

Commercial Vehicle: US DOT #: _____ VIN #: _____

Vehicle License: 688TYC Lic. State: CA Expiration: 7/2014 Year: 2013 Make: ESCAPE Body: SUV Color: SILV

Registered Owner: HEPTZ Address: DENVER AIRPORT

Same

COUNTY CODE 10.04.040 DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE(S)

1. Violation: 489-361 NOC NRS CFR County Code Municipal Code

Description: Exceeded Speed

To Wit: EXCEEDED SPEED

Posted Speed: 75 Actual Speed: 78 Cited Speed: NA

NO BAIL: Bail Amount: _____ Admin Assessment: _____ Total: _____

2. Violation: NOC NRS CFR County Code Municipal Code

Description: NO BAIL

To Wit: NO BAIL

NO BAIL: Bail Amount: _____ Admin Assessment: _____ Total: _____

3. Violation: NOC NRS CFR County Code Municipal Code

Description: NO BAIL

To Wit: NO BAIL

NO BAIL: Bail Amount: _____ Admin Assessment: _____ Total: _____

Vehicle has current proof of insurance? Yes No Expiration Date of Insurance Card: _____

I certify (or Declare) that I have reasonable grounds/probable cause to believe and do believe that above named person committed the above infraction(s) and/or offense(s) contrary to law.

Officer/Complainant PRINTED Name: _____ Officer/Complainant's Signature: _____ I.D. # H202

Court: _____ Address: _____

You are hereby ordered to appear on _____ Day of _____ 20 at _____ am/pm

Without admitting having committed each of the above offense(s), I hereby promise to respond as directed on this notice and waive my right to be taken immediately before a magistrate (NRS 484.799 and NRS 484.803)

Defendants: _____ Interpreter Needed

Total Bail: _____

First:

Middle: